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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,608	07/29/2003	Anthony F. Whitemiller		5825

23121 7590 07/27/2007  
THE LAW FIRM OF HARRIS & BURDICK  
HAROLD BURDICK AND ROBERT HARRIS  
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SUITE E  
BOULDER, CO 80301

EXAMINER
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PRONE, JASON D

ART UNIT	PAPER NUMBER
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3724

MAIL DATE	DELIVERY MODE
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07/27/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/628,608	<b>Applicant(s)</b> WHITEMILLER ET AL.	
	<b>Examiner</b> Jason Prone	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 May 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-20 is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Oath/Declaration*

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

In this case, the duty to disclose incorporates the incorrect statement "We acknowledge the duty to disclose information which is material to the examination of this application under 37 C.F.R. 1.56".

The correct duty to disclose statement is as follows:

"I acknowledge the duty to disclose information which is material to patentability of this application in accordance with Title 37, Code of Federal Regulations Section 1.56."

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldwitz (4,993,093) in view of Collins (5,581,834). Goldwitz discloses the invention including first and second housing portions forming a mount (20), the mount having a

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path defined therein by the first and second housing portions with the path terminating at an open end between the first and second housing portions at one end of the mount (22 and 24), a tape measure blade receiving slot defined in the mount by the first and second housing portions and located in said one end of the mount (30), and a knife blade shuttle selectively movable along the path defined at the mount (24).

However, Goldwitz fails to disclose first and second resilient clips each receivable at a different one of the first and second housing portions to define the slot so that the tape blade is cooperatively gripped between the clips.

Collins teaches it is old and well known for receiving slots to incorporate first and second resilient clips at the first and second housing portions adjacent to the slot and configured to cooperatively grip an item received in the slot (Column 6 lines 21-25). Collins teaches the idea of a receiving slot incorporating resilient clips to snugly engage a received item. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the slot of Goldwitz with resilient clips, as taught by Collins, to better grip the end of any item received in the slot.

Collins remains silent with respect to the placement of the resilient clips however, to one of ordinary skill in the art it would have been obvious/old and well known to place the clips on opposite sides of the cavity/housing to snugly hold the item entering the cavity. One skilled in the art would recognize that the by having the clips on opposite sides of the item to be held, the item would receive the same forces on each side that would keep the item straight and not bend the item which could be the case with both clips on a single side thereby applying forces to only one side.

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4. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldwitz in view of Collins as applied to claim 1 above, and further in view of Thomas III (Des. 238,247). Goldwitz in view of Collins disclose the invention including the mount has a head portion at said one end of the mount (Fig. 1 in Goldwitz) and a handle portion (21 in Goldwitz), and the slot being located through the head portion of the mount (30 in Goldwitz).

However, Goldwitz in view of Collins fail to disclose the head portion is enlarged in at least one dimension relative to the handle portion, an angularly diverging head portion with a surface area that is expansive to the width of the handle portion, and the surface area is curvilinear and is characterized by surface irregularities.

Thomas III teaches that is old and well known in the art of utility knives to incorporate head portion that is enlarged in at least one dimension relative to the handle portion, an angularly diverging head portion with a surface area that is expansive to the width of the handle portion, and the surface area is curvilinear and is characterized by surface irregularities (Figs. 1 and 2). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Goldwitz in view of Collins with the head portion, as taught by Thomas III, to allow the knife to fully support a broader finger.

5. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldwitz in view of Collins as applied to claim 1 above, and further in view of Canino (4,890,387). Goldwitz in view of Collins disclose the invention but fail to disclose a saw

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blade pivotably connected in an opposite end of the mount, and at least one of the first and second housing portions includes an exterior surface with a plurality of rasp teeth.

Canino teaches that it is old and well known in the art of utility knives to incorporate a saw blade pivotably connected in an opposite end of the mount (31) and at least one of the first and second housing portions includes an exterior surface with a plurality of rasp teeth (16a). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Goldwitz in view of Collins with the saw blade and rasp teeth, as taught by Canino, to make the tool more versatile.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goldwitz in view of Collins further in view of Thomas III (Des. 238,247) as applied to claims 1 and 2 above, and further in view of Huang (US 2002/0124411). Goldwitz in view of Collins further in view of Thomas III disclose the invention including the shuttle includes a blade holding portion (Fig. 4 in Goldwitz) and a manipulable porting extending away from the blade holding potion and accessible at the mount at a position spaced from the head portion (24 in Goldwitz).

However, Goldwitz in view of Collins further in view of Thomas III fail to disclose a lock-out means in the mount and cooperative with the manipulable portion for prohibiting movement of the shuttle in a preselected circumstance.

Huang teaches it is old and well known in the art of utility knives to incorporate a lock-out means in the mount (151) and cooperative with the manipulable portion (322) for prohibiting movement of the shuttle in a preselected circumstance (Page 2, lines 7-9 of paragraph [0023]). Therefore, it would have been obvious to one of ordinary skill in

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the art, at the time of the invention, to have provided Goldwitz in view of Collins further in view of Thomas III with a lock-out means, as taught by Huang, to prevent the blade from moving to the extended/working position at an unwanted time.

***Allowable Subject Matter***

7. Claims 7-20 are allowed.

***Response to Arguments***

8. Applicant's arguments filed 01 May 2007 have been fully considered but they are not persuasive. Collins does remain silent with respect to the placement of the resilient clips however, to one of ordinary skill in the art it would have been obvious/old and well known to place the clips on opposite sides of the cavity/housing to snugly hold the item entering the cavity. One skilled in the art would recognize that the by having the clips on opposite sides of the item to be held, the item would receive the same forces on each side that would keep the item straight and not bend the item which could be the case with both clips on a single side thereby applying forces to only one side. Collins is teaching that it is old and well known in the art of receiving slots to incorporate clips to snugly hold the received item. It is then old and well known in the art of clipping or holding to grip a received item on both sides to hold an item in place.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is (571) 272-4513. The examiner can normally be reached on 8:00-5:30, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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July 19, 2007

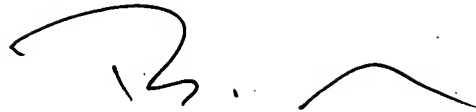


Patent Examiner

Jason Prone

Art Unit 3724

T.C. 3700



BOYER D. ASHLEY  
SUPERVISORY PATENT EXAMINER